

Juan Figueroa
Law Report
Executive Summary

Mr. Juan Agustín Figueroa Yavar is a Procedural Law Professor at Universidad de Chile, where he received his law degree. Amongst others, he is a former Justice of the Constitutional Court and served as Secretary of Agriculture during Patricio Aylwin's presidency. He is also member of several boards of directors.

The main conclusions of his report are the following:

1° *"In the specific analyzed case, the invocation of the appellant that the defendant had, in an arbitrary and illegal manner, breached a right to property for their option in social interest in A.A. Sur, by means of the sale of 24.5% of the social rights to a third party, reflects unmistakably that knowledge and resolution of this situation is called for when taking the route of protection. The action undertaken is indeed unideal, as is it based on supposed rights and correlative contractual obligations which can only be interpreted, determined and carried out in their correct sense and environment, through prosecution in a declarative trial with higher knowledge where the conflict and controversy between both parties can be considered."*

2° *"Just as we concluded, the ownership which a subject holds with respect to personal rights arising from a contract must be distinguished from those which are the object of law. Thus, in the case to be analyzed by the Court, the alleged ownership that CODELCO may have with respect to an option which would grant them the Contract to purchase or acquire for itself shares in Anglo American Sur S.A. must be distinguished, as it is to be exercised within the specific contract period, the content of the same option, or more precisely the correlative obligation upon Anglo to sell to Codelco a participation which does not exceed 49% once said option has been exercised."*

3° *"[...] the right to property which CODELCO claims to have over personal rights to exercise the right to purchase, can never be extended unduly because of the effects of its content. Consequently, if the ownership of the personal right to purchase has not been weakened, the protection resource lacks any object."*

4° *"In such a case, the protection resource from CODELCO is out of place from the analyzed procedural perspective, since: i) the disagreement submitted for consideration by the Court is of such complexity and controversy between each*

party that it must be studied with a cognition procedure, ii) the objective of the appellant is the protection of the content or specific part which deals with the alleged personal right (theoretical right to acquire 49% of the shares of Anglo American Sur S.A. and the correlative obligation - also theoretical - of Anglo to abstain from transferring to a third party said shares), an aspect which is not covered by the requested protection resource, and iii) the appellant lacks any legitimate asset to validly exercise the protection action, since it invokes a controversial right which lacks certainty unquestionable character, which is necessary in order for the resource to be undertaken.
